

LONE STAR STEEL CO. ET AL.

IBLA 86-375

Decided March 29, 1988

Appeals from a decision of the New Mexico State Office, Bureau of Land Management, correcting patent No. 35-84-0069. NM 56615 (OK).

Reversed.

1. Federal Land Policy and Management Act of 1976:
Correction of Conveyance Documents--Patents of
Public Lands: Corrections--Patents of Public Lands:
Reservations

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1746 (1982), the Secretary has authority to correct errors in patent documents at any time correction is deemed necessary or appropriate. However, only mistakes of fact may be corrected, not mistakes of law, and a patent may not be corrected without the consent of the patentee.

2. Federal Land Policy and Management Act of 1976:
Correction of Conveyance Documents--Patents of
Public Lands: Corrections--Patents of Public Lands:
Reservations

Where a Government patent provides that land is conveyed subject to existing access, a dispute between private parties regarding a right of access cannot be adjudicated by BLM, and correction of the patent by BLM to define more clearly that access against the wishes of the patentee, is improper.

APPEARANCES: William A. Osborn, Esq., Lone Star, Texas, for Lone Star Steel Company; Douglas Hambach, pro se; Larry B. Lucas, Esq., Poteau, Oklahoma, for Jim Beam.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lone Star Steel Company (Lone Star), Jim Beam, and Douglas Hambach have appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 5, 1985, correcting patent No. 35-84-0069 (NM 56615(OK)).

The subject land, described as the SW[^], sec. 15, T. 8 N., R. 22 E., Indian Meridian, Haskell County, Oklahoma, was identified for disposal and offered for competitive sale by BLM on January 3, 1984. The offer required that sealed bids be submitted by March 12, 1984. Patent No. 35-84-0069 issued for this parcel on June 27, 1984, to Jim Beam, the sole bidder, subject to a right-of-way reservation (patent reservation No. 7) for "[a] right-of-way not exceeding 40 feet in width for future roadway and public utility purposes, to be located on the south side of said tract." The patent also stated that the land was conveyed subject to "[e]xisting access road rights-of-way." Beam sold the parcel (hereafter the Lone Star parcel) to Lone Star.

On August 21, 1984, BLM issued patent No. 35-84-0096 to Douglas Hambach for another parcel sold at the same competitive sale, described as Townsite Addition No. 2, lots 5 to 9, inclusive, and lots 18, 19, 28, 29, and 30 within the NW[^], sec. 22, T. 8 N., R. 22 E., Indian Meridian. Part of the south boundary of the Lone Star parcel is common to the north boundary of the Hambach parcel. The cover letter which accompanied Hambach's bid stated: "This bid is submitted with the understanding that the access road will remain usable by the owner of the parcel (4) [the Hambach parcel] as intimated on page 3, paragraph 3 of the Land Description Brochure."

The patent for the Lone Star parcel does not specifically mention access to the Hambach parcel, although it does preserve "existing access road rights-of-way." Hambach's patent No. 35-84-0096 also issued subject to a utility right-of-way reservation: "[a] right-of-way not exceeding 40 feet in width for future roadway and public utility purposes, to be located along the existing access road within the north one-half of said tract." The Hambach patent also includes a general reservation for "existing access." ^{1/}

In a memorandum, dated November 2, 1984, from the Area Manager, Oklahoma Resource Area Headquarters, BLM, to the New Mexico State Director, BLM, requesting an opinion from the Office of the Field Solicitor regarding the issuance of a corrective patent, the Area Manager stated at pages 1-2:

Douglas A. Hambach submitted a bid with the understanding that the access road which traverses Parcel 2 will remain usable by the owner of Parcel 4 (Enclosure 2). A reservation was made in the patent issued to Jim Beam (Parcel 2) which reserves a right-of-way not exceeding 40 feet in width for future roadway and public utility purposes, to be located on the south side of said tract (Enclosure 3). The Oklahoma Natural Gas Company (ONG)

^{1/} The sales brochure stated at page 1: "Each patent will contain certain reservations for existing access roads, existing utility easements, and other reservations required by law. Specific reservations for each parcel are defined on the last pages of this brochure." The specific reservations listed in the brochure for the two parcels in question were the 40-foot wide future roadway rights-of-way set forth, supra.

has a 50 x 50 feet right-of-way (NM-375) for a regulator site in the southeast corner and on the west side of Parcel 2 (Enclosures 1, 4, and 7). Therefore, the existing right-of-way denies Mr. Hambach access to his property.

Parcel 2 has been deeded to the Lone Star Steel Company since the sale of March 12, 1984. We have asked the Lone Star Steel Company if they would allow us to issue a corrective patent for Parcel 2 (Jim Beam), so that Mr. Hambach would have legal access on the existing road. In their reply of September 14, 1984, Lone Star suggested an alternative route that would skirt the ONG grant on the north and run westward, congruent to the south line of the property to the point where it would inter-sect the old trail road, exiting the property to the south (Enclosures 5 and 6).

We have indicated to Mr. Hambach that the Lone Star Steel Company would allow us to correct the patent issued to Jim Beam, in order to provide him with legal access. [2/] Mr. Hambach has not raised any objections to this proposal, but has indicated that the BLM should incur the road construction costs, since purchase of the parcel was conditional on the use of the existing road.

Our records do not indicate that the BLM has any interest in the road. The road may have been formerly a county road, since the Arkansas Louisiana Gas Company was given permission by the County Commissioners to cross the road with their pipeline (Enclosure 7). We have discussed this matter with County Commissioner Ray Ballard, but he has not provided us with a definite answer as to the counties' [sic] jurisdiction of this road.

In a memorandum to the New Mexico State Director, dated November 15, 1985, the Field Solicitor approved issuance of a corrective patent. BLM then issued its December 5, 1985, decision correcting Lone Star's patent to specify a 20-foot-wide right-of-way near the south boundary of the Lone Star parcel. The BLM decision stated:

The Notice of Realty Action and other sale information implied that a right of access via the existing road would be reserved across Mr. Beam's land to allow Mr. Hambach access to his land on the south. The reservation for access in patent No. 35-84-0069 did not clearly define the route of access.

2/ By letter dated Sept. 4, 1984, to Lone Star, BLM requested permission to issue a corrective patent to specify the location of the reserved right-of-way. Lone Star responded by letters dated Sept. 14 and Nov. 9, 1984, objecting to the route BLM proposed and suggesting an alternate route closer to the south edge of the Lone Star parcel.

The error in the original patent issued to Jim Beam will be corrected by reserving access along an existing road involving a strip, piece or parcel of land lying in the SW¹/₄ of Section 15, T. 8 N., R. 22 E., Indian Meridian. The following description is the best-fit centerline of an existing unimproved dirt road and all bearings contained in this description are based on astronomical bearings.

Said parcel of land encloses 10 feet on either side of the following centerline description: [A centerline description followed].

Lone Star appealed asserting that BLM lacks the jurisdiction or authority to adjudicate property rights of private parties. ^{3/} Lone Star contends that the change BLM sought in this case did not meet Departmental criteria for patent correction and that the BLM decision is an unlawful abuse of discretion because the decision breached an "understanding" it had with BLM as to the location of the right-of-way. It claims BLM's action violated 43 CFR Subpart 1865. Lone Star also argues that no equitable considerations call for patent correction in this case. BLM's action constitutes a taking of its property, Lone Star contends, and thus violates its constitutional rights. Lone Star insists that BLM did not notify it that a decision would be made, thus denying Lone Star a hearing or the chance to supply additional information. Lone Star objects to access along "the existing old trail road," preferring instead an alternate route to be built on the south side of the tract according to patent reservation No. 7. ^{4/}

^{3/} The case file BLM forwarded to the Board contained a memorandum, dated after the notices of appeal were filed, which discusses the disputed patent correction. Because the memorandum was included while this proceeding was pending and because it involved Department officials and offices interested in this proceeding, the Board considered the document a prohibited ex parte communication concerning the merits of a proceeding within the meaning of 43 CFR 4.27(b), in the absence of any indication that it was served upon all parties. Similarly, letters from appellant Hambach to this Board, dated May 14 and Nov. 8, 1986, were communications concerning the merits of a proceeding between a party to the proceeding and personnel of the Office of Hearings and Appeals who may reasonably be expected to become involved in the decisionmaking process. 43 CFR 4.27(b)(1). In accordance with these regulations, the Board included all these communications in the record and provided them to all parties, allowing 30 days to respond. See Amoco Production Co., 101 IBLA 152, 155-57 (1988) (Irwin, J., concurring). No responses were filed.

^{4/} Beam filed an appeal asserting that there was no problem concerning access to the Hambach parcel. The record does not contain a copy of the conveyance from Beam to Lone Star. Given our disposition of this case, it is not necessary to determine whether Beam has standing to appeal BLM's decision under 43 CFR 4.410.

Hambach appealed also, asserting that the right-of-way should have been 40 feet wide, not 20, to conform to the original easement, to accommodate his farm machinery and trucks, and to allow construction of bar ditches on either side of the roadway to alleviate local mud problems.

[1] Section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1746 (1982), gives the Secretary of the Interior discretionary authority to correct errors in patent documents at any time correction is deemed necessary or appropriate. 43 CFR 1865.0-1; 43 CFR 1865.0-3. The objective of a patent correction is to eliminate patent errors from the chain of title. 43 CFR 1865.0-2. Such an error can include the omission of "requisite descriptions [or] * * * reservations." However, only mistakes of fact may be corrected, not mistakes of law. 43 CFR 1865.0-5(b). See Walter & Margaret Bales Mineral Trust, 84 IBLA 29, 32 (1984).

A claimant asserting ownership of lands described in and based upon a patent may file an application to correct a patent error. 43 CFR 1865.1. The case record does not indicate that any such application was filed. In addition, an authorized officer may initiate and make patent corrections on his or her own motion, if all existing owners agree. 43 CFR 1865.3. A patent may not be administratively corrected against the wishes of the patentee. Rosander Mining Co., 84 IBLA 60, 64 (1984).

Lone Star opposes BLM's change in its patent. A patent correction initiated by the authorized officer cannot be imposed over the landowner's objections. 43 CFR 1865.3. Without the consent of the affected landowner, Lone Star, BLM cannot change the patent in question. See Rosander Mining Co., supra.

BLM initiated the disputed correction in an effort to ensure access to the Hambach parcel across the Lone Star parcel. The perceived error BLM determined to be in need of correction was the manner in which access had been reserved in the Lone Star patent. This was not a mistake of fact, such as a land description containing an incorrect call. Only the correction of mistakes of fact in an issued patent is allowed by 43 CFR 1865.0-5(b).

[2] There is a question whether there was any error at all in the Lone Star patent regarding access; rather there appears to be a dispute over just what access was "existing" at the time of patent. 5/ When a dispute arises between private parties as to the existence, location, or extent of a private right of access across private land, BLM cannot adjudicate that right. This is the role of state courts. Edward J.

5/ The BLM decision attempts to define more clearly an existing road in the SW¹/₄, sec. 15. Hambach, in insisting upon a 40-foot right-of-way, obviously assumes that BLM's patent correction relates to patent reservation No. 7 to the United States for a "future roadway." There is no indication, however, that BLM's decision related to patent reservation No. 7.

Connolly, Jr., 94 IBLA 138, 146 (1986). If Lone Star denies Hambach the use of existing access, it will be a matter for the state court, not the Department, to adjudicate. Once a patent issues, the Department of the Interior loses jurisdiction over the land, and BLM no longer may adjudicate the relative rights of private parties. Goodnews Bay Mining Co., 81 IBLA 1, 6 (1984). It is not the role of BLM to negotiate a change in the access on behalf of private parties after patent issues.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is reversed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge